

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

2. When the Department learned of the petitioner's job it calculated her monthly income by dividing the gross pay she would make during the entire school year by ten, the number of months in the school year. The petitioner does not dispute that her average monthly pay computed in this manner is \$1,331.33.

3. Based on this income the Department notified the petitioner that her VHAP would end on October 31, 2004 because her average monthly income exceeds the program maximum of \$1,164 a month. Assuming that the Department has allowed the petitioner the standard earned income deduction of \$90 a month, the petitioner's income exceeds the monthly maximum by about \$100.

4. The petitioner argues that her contract should be considered over the course of a 12-month calendar year. This would yield average monthly earnings of about \$1,109, which would make her eligible for VHAP. This method assumes, however, that the petitioner will be unemployed in the months of July and August 2005.

ORDER

The Department's decision is affirmed.

REASONS

Under the rules adopted by the Department for the VHAP program at W.A.M. 4001.81, income for purposes of eligibility is calculated as follows:

Countable income is all earned and unearned income, as defined in this section, less all allowed deductions. Income in the month of application (or review) and future months is estimated based on income in the calendar month prior to the month of application (or review) unless changes have occurred or are expected to occur and this

income does not accurately reflect ongoing income. If changes are expected to occur, an estimate of income based on current information should be used.

In this case, the Department looked at the petitioner's ten-month contract starting in September 2004 to determine her average "ongoing income" through June 2005. Based on that information, the Department determined her monthly countable income to be \$1,331.33. That amount (less the standard \$90 employment expense deduction) is in excess of the income maximum for a one-person household, which is \$1,164 per month. W.A.M. 4001.83 III, Procedures P-2420B(1).

It must be concluded that the Department's determination of the petitioner's income is both reasonable under the terms of the petitioner's contract and in accord with the provisions of the above regulation. If the petitioner finds herself unemployed at the end of the school year, or before, she can reapply for VHAP at that time. She can also reapply for VHAP and ask the Department to "re-average" her income if she misses a significant amount of work due to illness or some other reason. The petitioner is also free to attempt to renegotiate her contract with her employer so that her earnings are paid out over a twelve-month period. As of now, however, there is no basis in either the regulations or under any circumstances alleged by the petitioner that would *require*

the Department to average the terms of her present contract over twelve months. Inasmuch as the Department's decision is in accordance with its regulations, the Board must uphold the result. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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